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	First Named Inventor	NIRANJAN PATEL	
	Art Unit	2854	
	Examiner Name	LEO T. HINZE	
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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	AHSAN & ASSOCIATES, PLLC		
Signature	<i>Aziz M. Ahsan</i>		
Printed name	AZIZ M. AHSAN		
Date	Nov. 29, 2007	Reg. No.	32,100

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[AMA No. 2004-310]

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant	: Niranjan PATEL	Examiner	: Leo T. Hinze
Serial No.	: 10/789,096	Art Unit	: 2854
Filed	: February 27, 2004	Conf. No.	: 7680
For	: SINGLE DAY ALARM CLOCK		

Board of Patent Appeals and Interference
US Patent and Trademark Office
PO Box 1450
Alexandria, Virginia 22313-1450

**APPELLANT'S AMENDED SUPPLEMENTAL APPEAL BRIEF
UNDER 37 C.F.R. § 41.37
TO THE BOARD OF PATENT APPEALS**

Sir:

This Amended Supplemental Appeal Brief is in response to "Notification of Non-Compliant Appeal Brief" communication dated October 31, 2007. The one month statutory period is set to expire on Friday, November 30, 2007.

This is also an Appeal from the Final Rejection dated September 22, 2006 rejecting Claims 1-18, of this Patent Application. A timely Notice of Appeal and the appeal fee were filed on December 26, 2006, and the Appeal Brief was also filed within the two months statutory period which was set to expire on Monday, February 26, 2007.

As required this Appellant's Appeal Brief and the requisite fee of \$250.00 for this Appeal Brief were timely paid. The Commissioner is also hereby authorized to charge payment of any fees associated with this communication or to credit any overpayment to the deposit account of Ahsan & Associates, PLLC deposit account number 50-2303.

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(i) REAL PARTY IN INTEREST

The real party in interest in this Appeal is the Inventor/Appellant Niranjan Patel, an individual, having an entire right, title, and interest in the above-identified Patent Application.

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(ii) RELATED APPEALS AND INTERFERENCES

The Appellant, his legal representative are presently unaware of any Appeal or Interference which will directly affect or be directly affected by or have a bearing on the Board's decision in this Appeal.

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(iii) STATUS OF CLAIMS

Claims 1-18 are pending in this Patent Application.

Claims 1-18 have all been rejected.

Claims 1-18 are now all on Appeal and appear in the Claims Appendix.

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(iv) STATUS OF AMENDMENTS

A Response to the Final Rejection was filed for this Patent Application and Claims 1-18 were amended. However, the Patent Office has maintained the rejection of Claims 1-18.

For the purposes of Appeal it is not clear whether the Proposed Amendment was entered or the entry was denied as the box in Section 7, of the Advisory Action dated December 20, 2006, has been checked, but boxes 7a or 7b have not been checked and thus it is not clear whether for the purposes of Appeal the "proposed amendment(s): a) will not be entered, or b) will be entered"

In the "Notification of Non-Compliant Appeal Brief" the Examiner had stated that "In the advisory action dated 12-20-2006, the Examiner clearly indicated in Item 3 that the proposed amendment will not be entered for the reasons checked in sub-items (a) and (c)." The Appellant agrees that Item 3, sub-items (a) and (c) were properly marked, but the Appellant would like to bring to Board's attention that Item 3 only deals with "proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief," while Item 7, and the sub-items of section 7, deal with "For purposes of appeal, the proposed amendment(s) ..." and the Examiner is silent on this issue and thus the confusion. Furthermore, the Examiner could deny entry of an Amendment in Item 3, but could allow the entry with an explanation in Item 7.

In order to avoid any confusion the Appellant has provided Claims 1-18, as amended, which appear in the Claims Appendix, pages 32-37, where in section (a) Claims as amended prior to the Final Office Action, appear on Pages 32-34, and in section, (b) Claims as amended after the Final Office Action appear on Pages 35-37.

Furthermore, the Appellant is also providing arguments to support the allowance of either set of claims, and the Board can take either set of claims to make their final determination on this Appeal.

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(v) SUMMARY OF CLAIMED SUBJECT MATTER

The Appellant's invention in one aspect, as disclosed in Claim 1, (as presented prior to the final office action), is an apparatus, comprising an alarm-clock 25, (specification paragraph 0017) wherein said alarm-clock 25, (specification paragraph 0017) has at least one button and at least one alarm 23, (specification paragraph 0019) and wherein when said alarm is set said alarm button 23, (specification paragraph 0019) radiates light 29, (specification paragraph 0020) to provide a visual reminder that the alarm has been set (specification paragraph 0020).

The Appellant's invention in one aspect, as disclosed in Claim 1, (as amended after the final office action), is an apparatus, comprising an alarm-clock 25, (specification paragraph 0017) wherein said alarm-clock 25, (specification paragraph 0017) has at least one button associated with at least one alarm 23, (specification paragraph 0019) and wherein when said alarm is set said alarm button 23, (specification paragraph 0019) activates at least one luminescent device 27, (specification paragraph 0019) and upon setting of said alarm said luminescent device 27, (specification paragraph 0019) radiates light 29, (specification paragraph 0020) through said alarm button 23, (specification paragraph 0020) to provide a visual reminder that said alarm has been set (specification paragraph 0020).

The Appellant's invention in another aspect, as disclosed in Claim 10, (as presented prior to the final office action), is an apparatus, comprising an alarm-clock 25, (specification paragraph 0017), wherein said alarm-clock 25, (specification paragraph 0017) has at least one button and at least one alarm 23, (specification paragraph 0019) and wherein when said alarm is set said alarm button 23, (specification paragraph 0019) radiates light 29, (specification paragraph 0020) to provide a visual reminder that said alarm has been set, (specification paragraph 0020) and wherein when said alarm is activated said alarm button 23, (specification paragraph 0019) radiates a flashing light 29,

(specification paragraph 0020).

Appellant's invention in another aspect, as disclosed in Claim 10, (as amended after the final office action), is an apparatus, comprising an alarm-clock 25, (specification paragraph 0017) wherein said alarm-clock 25, (specification paragraph 0017) has at least one button associated with at least one alarm 23, (specification paragraph 0019) and wherein when said alarm is set said alarm button 23, (specification paragraph 0019) activates at least one luminescent device 27, (specification paragraph 0019) and upon setting of said alarm said luminescent device 27, (specification paragraph 0019) radiates light 29, (specification paragraph 0020) through said alarm button 23, (specification paragraph 0020) to provide a visual reminder that said alarm has been set, (specification paragraph 0020) and wherein when said alarm is activated said luminescent device 27, (specification paragraph 0019) radiates a flashing light 29, (specification paragraph 0020) through said alarm button 23 (specification paragraph 0019).

(vi) GROUNDS OF REJECTIONS TO BE REVIEWED ON APPEAL

(1) Was it proper to Reject Claims 1-6, 8 and 9 under 35 U.S.C. §102(b) as being anticipated by Jones, Jr., (U.S. Patent No. 5,402,396)?

(2) Was it proper to Reject Claim 7 under 35 U.S.C. § 103(a) as being unpatentable over Jones, Jr., (U.S. Patent No. 5,402,396)?

(3) Was it proper to Reject Claims 10-18 under 35 U.S.C. § 103 (a) as being unpatentable over Jones, Jr., (U.S. Patent No. 5,402,396) in view of Parissi (U.S. Patent No. 2,444,748)?

(4) Was it proper to issue a defective Advisory Action?

(vii) ARGUMENTS

(1) Was it proper to Reject Claims 1-6, 8 and 9 under 35 U.S.C. §102(b) as being anticipated by Jones, Jr., (U.S. Patent No. 5,402,396)?

Claims 1-6, 8 and 9 stand rejected under 35 U.S.C. § 102(b). The Patent Office has contended that these claims are anticipated by Jones, Jr., (U.S. Patent No. 5,402,396) (hereinafter Jones). Appellant respectfully submits that this rejection should be reversed for at least the following reasons.

In order for a claim to be anticipated under 35 U.S.C. § 102, a single prior art reference must disclose each and every element of the claim in exactly the same way. See Lindeman Maschinenfabrik v. American Hoist and Derrick, 730 F.2d 1452, 1458 (Fed. Cir. 1984) (emphasis added). Jones does not disclose each and every element of the claimed invention.

Independent Claim 1, as amended, prior to the Final Office Action, recites an apparatus, comprising an alarm-clock 25, wherein said alarm-clock 25, has at least one button and at least one alarm 23, and wherein when said alarm 23, is set said alarm button 23, radiates light to provide a visual reminder that the alarm 23, has been set.

Or in the alternative, independent Claim 1, as amended, after the Final Office Action, recites an apparatus, comprising an alarm-clock 25, wherein said alarm-clock 25, has at least one button associated with at least one alarm 23, and wherein when said alarm is set said alarm button 23, activates at least one luminescent device 27, and upon setting of said alarm said luminescent device 27, radiates light 29, through said alarm button 23, to provide a visual reminder that said alarm has been set.

In the Final Office Action the Examiner had objected to the use of "visual reminder" as being "immaterial to the structure and operation of the alarm clock apparatus," and in order to overcome this objection the Appellant had taken the structural term "at least one luminescent device ... associated with said alarm button" from Claim

2, and weaved it into Claim 1. This was not only meant to narrow the scope of Claim 1, but also to place Claim 1 in a better condition for allowance or appeal, and thus the Appellant disagrees with the Examiner that the Amendment of Claim 1, after the Final Office Action "raise new issues" or "not deemed to place the application in better form for appeal ...," as the structural terminology or limitation of amended Claim 1, already appeared in the unamended Claim 2.

Additionally, the presences of a luminescent device from Claim 2 into Claim 1, only reinforces that said apparatus has a visual reminder.

Furthermore, the Appellant believes that a visual reminder by itself provides a structure to Claim 1, without the presence of a luminescent device, as a visual reminder has to have some structure for a person to see.

The Appellant has amended Claims 1-6, 8 and 9 and therefor the rejection of these claims under Jones is now moot.

The Patent Office had objected to the previous amendment to Claims 1-6, 8 and 9, stating that "the limitation "to provide a visual reminder that the alarm has been set"" is a "functional language" and that "Whether the user is visually reminded that an alarm is set is immaterial to the structure and operation of the alarm clock apparatus." Due to the objection of the Patent Office to the claim language, the Appellant has amended Claims 1-6, 8 and 9 to provide "structure and operation" to the "functional language" in order to overcome the Patent Office's objection to the language. As the Board will appreciate that the Amendment to Claims 1-6, 8 and 9, was to provide "structure and operation," but in response the Patent Office stated that the "proposed amendments raise the new issue of an alarm button that when set, activates at least one luminescent device. This new issue requires further search and consideration" even though, when the two sets of claims are compared this is not true, as the amendment was directed only to provide "structure and operation" in order to overcome the Patent Office's objection to the claim language. Thus this amendment should have been entered and considered by the Patent Office.

The Appellant has discussed Jones in paragraph 4, of the instant patent application and that discussion is incorporated herein by reference. The Appellant would also like to

state that there is no teaching in Jones that “when the alarm is set the alarm button activates at least one luminescent device, and upon setting of the alarm the luminescent device radiates light through the alarm button to provide a visual reminder that the alarm has been set,” as disclosed and claimed by the Appellant in Claims 1-6, 8 and 9.

In fact, Jones teaches away from Appellant’s invention when he provides a separate “alarm ON/OFF button 24” (column 2, line 22) and a separate “night light 28” which “is disposed between the alarm ON/OFF button 24 and the sleep button 26.” (Column 2, lines 27-29). Whereas, the Appellant teaches that “when the alarm is set the alarm button activates at least one luminescent device, and upon setting of the alarm the luminescent device radiates light through the alarm button to provide a visual reminder that the alarm has been set,” as disclosed and claimed by the Appellant in Claims 1-6, 8 and 9.

Additionally, Jones teaches away from Appellant’s invention when he provides a “switch 30 which ... **allows the night-light to be switched off.**” (Column 2, lines 35-38.) (Emphasis added.) Whereas, the Appellant teaches that “when the alarm is set the alarm button activates at least one luminescent device, and upon setting of the alarm the luminescent device radiates light through the alarm button to provide a visual reminder that the alarm has been set,” as disclosed and claimed by the Appellant in Claims 1-6, 8 and 9.

Furthermore, Jones teaches away from Appellant’s invention when he teaches “that the translucent cover” be “adapted to permit light to be more readily transmitted through the side edges” so that “the ON/OFF” button 24 “can be specifically illuminated.” (Column 2, lines 41-45.) Whereas, the Appellant teaches that “when the alarm is set the alarm button activates at least one luminescent device, and upon setting of the alarm the luminescent device radiates light through the alarm button to provide a visual reminder that the alarm has been set,” as disclosed and claimed by the Appellant in Claims 1-6, 8 and 9.

Furthermore, the Patent Office has not specifically stated where Jones teaches that that “when the alarm is set the alarm button activates at least one luminescent device, and upon setting of the alarm the luminescent device radiates light through the alarm button to provide a visual reminder that the alarm has been set,” as disclosed and claimed by the Appellant in Claims 1-6, 8 and 9.

It also seems that the Patent Office is confusing between the terms "setting" of the alarm and the "activation" of the alarm. In Appellant's invention that "when the alarm is set the alarm button activates at least one luminescent device, and upon setting of the alarm the luminescent device radiates light through the alarm button to provide a visual reminder that the alarm has been set," as disclosed and claimed by the Appellant in Claims 1-6, 8 and 9. Basically, in Appellant's invention when the alarm is set the alarm button 23, lights up to give a visual reminder that the alarm has been set, which is neither disclosed nor taught in Jones. In Jones the alarm on/off button 24 has no light, either when it is set or when it is activated. The "light" in Jones for the alarm button 24, comes from the night light 28, which may or may not be activated.

Furthermore, the Patent Office is using hindsight reconstruction, which is impermissible, to reject Appellant's patent application. Basically, the Patent Office is combining Jones alarm button 24, with Jones night light 28, and then combining the Appellant's teaching of radiation of light upon setting of the alarm is then using this information to reject Appellant's claimed invention.

Similarly, the Patent Office is using hindsight reconstruction, which is impermissible, to reject Appellant's patent application. Basically, the Patent Office is combining Jones alarm button 24, (which can be independently turned on/off) with Jones night light 28, (which can be independently turned on/off), and even though Jones does not provide any motivation or teaching, and then using Appellant's teaching the Patent Office is then rejecting Appellant's claimed invention.

In fact, Jones further teaches away from Appellant's invention when in the "Abstract," lines 6-8, he teaches that "the brightness of the **night light** to be selective controlled or **turned off** irrespective of the **alarm button** being set to its **ON position**." (Emphasis added.)

Furthermore, independent Claim 1, as amended, recites an apparatus, comprising an alarm-clock 25, wherein said alarm-clock 25, has at least one button associated with at least one alarm 23, and wherein when said alarm is set said alarm button 23, activates at least one luminescent device 27, and upon setting of said alarm said luminescent device

27, radiates light 29, through said alarm button 23, to provide a visual reminder that said alarm has been set, which is neither disclosed nor taught by Jones.

Claim 2

Furthermore, there is no teaching in Jones that the luminescent device 27, of the Appellant's invention be selected from a group consisting of an incandescent bulb, a fluorescent bulb, a sodium bulb, a halogen bulb, an LED, and an LCD, as disclosed and claimed in Claim 2. Jones only teaches the use of "light bulbs" in combination with the night light 28, but no bulb in combination with the alarm button 24.

Claim 3

Similarly, there is no teaching in Jones that the alarm button 23, of the Appellant's invention be selected from a group consisting of opaque material, transparent material, translucent material and iridescent material, as disclosed and claimed in Claim 3. Jones only teaches the use of a "removable translucent cover" in combination with the night light 28, but no translucent material in combination with the alarm button 24.

Claim 4

Additionally, there is no teaching in Jones that there be at least one electronic component 47, associated with the alarm-clock 25, of the Appellant's invention and wherein the electronic component 47, be selected from a group consisting of a second alarm-clock, an AM-FM radio, a SW-MW radio, a CB radio, a weather channel radio, a cassette tape player and/or recorder, a TV, a VCR, a CD, a DVD, a PDA, a computer, a telephone, a mobile phone and an MP3 player, as disclosed and claimed in Claim 4. Jones only discloses a radio-alarm clock.

Claim 5

Furthermore, there is no teaching in Jones that the Appellant's alarm-clock 25 be capable of being operated using an alternating current or a directed current, as disclosed and

claimed in Claim 5.

Claim 6

Moreover, there is no teaching in Jones that the at least one button be selected from a group consisting of a button that protrudes from the alarm-clock housing, a button that is flush with the alarm-clock housing, a button that is below the alarm-clock housing and a button that is a touch-sensitive membrane, as disclosed and claimed in Claim 6. Jones only teaches a "removable translucent cover."

Claim 8

Furthermore, there is no teaching in Jones that the display of the alarm-clock 25, of the Appellant's invention be selected from a group consisting of a digital display and an analog display, as disclosed and claimed in Claim 8.

Claim 9

Additionally, there is no teaching in Jones that at least one means be provided to control light radiating from the alarm-clock 25, as disclosed and claimed in Claim 9 of Appellant's invention.

Claims 1-9

Based upon the above-mentioned arguments Appellant's claimed elements are not only missing from the prior art, but they have not even been discussed in the prior art, and thus Appellant's invention is not anticipated by Jones.

Furthermore, the Patent Office is using hindsight reconstruction, which is impermissible, to reject Appellant's claimed subject matter.

In light of these facts Appellant respectfully submits that Jones does not anticipate the invention of Claims 1-6, 8 and 9.

Additionally, Claims 2-6, 8 and 9, depend from, and include all the limitations of Claim 1, and therefore are also not anticipated by Jones.

Therefore, the Appellant respectfully requests that the rejection of Claims 1-6, 8 and 9, under 35 U.S.C. § 102(b), should kindly be reversed.

(2) Was it proper to Reject Claim 7 under 35 U.S.C. § 103(a) as being unpatentable over Jones, Jr., (U.S. Patent No. 5,402,396)?

Claim 7 stands rejected under 35 U.S.C. § 103(a). The Patent Office has contended that this claim is unpatentable over Jones, Jr., (U.S. Patent No. 5,402,396) (hereinafter Jones). Appellant respectfully submits that that this rejection should be reversed for at least the following reasons.

In order for a claim to be rejected for obviousness under 35 U.S.C. § 103(a), not only must the prior art teach or suggest each element of the claim, the prior art must also suggest combining the elements in the manner contemplated by the claim. See Northern Telecom, Inc. v. Datapoint Corp., 908 F. 2d 931, 934 (Fed. Cir. 1990), cert. denied 111 S.Ct. 296 (1990); In re Bond, 910 F. 2d 831, 834 (Fed. Cir. 1990). The Examiner bears the initial burden of establishing a *prima facie* case of obviousness. See M.P.E.P. §2142. To establish a *prima facie* case of obviousness, the Examiner must show, *inter alia*, that there is some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify or combine the references and that, when so modified or combined, the prior art teaches or suggests all of the claim limitations. See M.P.E.P. § 2143. Appellant respectfully submits that neither of these criteria for obviousness are met here.

Appellant has amended Claim 7 and therefor the rejection of this claim under Jones is now moot.

The Patent Office had objected to the previous amendment to Claim 7, stating that “the limitation “to provide a visual reminder that the alarm has been set”” is a “functional language” and that “Whether the user is visually reminded that an alarm is set is immaterial to the structure and operation of the alarm clock apparatus.” Due to the objection of the Patent Office to the claim language, the Appellant has amended Claim 7 to provide “structure and operation” to the “functional language” in order to overcome the Patent Office’s objection to the language. As the Board will appreciate that the Amendment to Claim 7, was

to provide "structure and operation," but in response the Patent Office stated that the "proposed amendments raise the new issue of an alarm button that when set, activates at least one luminescent device. This new issue requires further search and consideration" even though, when the two sets of claims are compared this is not true, as the amendment was directed only to provide "structure and operation" in order to overcome the Patent Office's objection to the claim language. Thus this amendment should have been entered and considered by the Patent Office.

The earlier discussion with reference to Jones in section (vii) ARGUMENTS section (1), is incorporated herein by reference. Additionally, there is no teaching in Jones that "when the alarm is set the alarm button activates at least one luminescent device, and upon setting of the alarm the luminescent device radiates light through the alarm button to provide a visual reminder that the alarm has been set," and where the "alarm-clock is powered by a power source selected from a group consisting of an alternating current source between about 120 volts and about 240 volts, and a direct current source between about 1 volt and about 24 volts" as disclosed and claimed by the Appellant in Claim 7.

Furthermore, there is no teaching in Jones that the alarm-clock 25, be powered by a power source selected from a group consisting of an alternating current source between about 120 volts and about 240 volts, and a direct current source between about 1 volt and about 24 volts, as disclosed and claimed in Claim 7, by the Appellant.

Additionally, the claimed subject matter of the independent Claim 1, as discussed above is not disclosed by Jones. The Appellant has already established that Appellant's independent Claim 1, is patentable over the prior art of record and therefore all the dependent claims are also patentable.

Furthermore, the various claimed elements of the Appellant's invention are not only not disclosed in the prior art, but neither has there been provided any motivation in the applied art to make obvious the Appellant's claimed invention.

Additionally, the Patent Office is using hindsight reconstruction, which is impermissible, to reject Appellant's claimed subject matter.

In light of these facts Appellant respectfully submits that Jones does not make

unpatentable the invention of Claim 7.

Additionally, Claim 7 depends from, and includes all the limitations of Claim 1, and therefore is not obvious over Jones.

Therefore, the Appellant respectfully requests that the rejection of Claim 7 under 35 U.S.C. § 103 (a) should kindly be reversed.

(3) Was it proper to Reject Claims 10-18 under 35 U.S.C. § 103 (a) as being unpatentable over Jones, Jr., (U.S. Patent No. 5,402,396) in view of Parissi (U.S. Patent No. 2,444,748)?

Claims 10-18 stand rejected under 35 U.S.C. § 103 (a). The Patent Office has contended that these claims are unpatentable over Jones, Jr., (U.S. Patent No. 5,402,396) (hereinafter Jones) in view of Parissi (U.S. Patent No. 2,444,748) (hereinafter Parissi). Appellants respectfully submit that this rejection should be reversed for at least the following reasons.

In order for a claim to be rejected for obviousness under 35 U.S.C. § 103(a), not only must the prior art teach or suggest each element of the claim, the prior art must also suggest combining the elements in the manner contemplated by the claim. See Northern Telecom, Inc. v. Datapoint Corp., 908 F. 2d 931, 934 (Fed. Cir. 1990), cert. denied 111 S.Ct. 296 (1990); In re Bond, 910 F. 2d 831, 834 (Fed. Cir. 1990). The Examiner bears the initial burden of establishing a *prima facie* case of obviousness. See M.P.E.P. §2142. To establish a *prima facie* case of obviousness, the Examiner must show, *inter alia*, that there is some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify or combine the references and that, when so modified or combined, the prior art teaches or suggests all of the claim limitations. See M.P.E.P. § 2143. Appellant respectfully submits that neither of these criteria for obviousness are met here.

Independent Claim 10, as amended, prior to the Final Office Action, recites an apparatus, comprising an alarm-clock 25, wherein said alarm-clock 25, has at least one button and at least one alarm 23, and wherein when said alarm 23, is set said alarm button 23, radiates light to provide a visual reminder that said alarm 23, has been set, and wherein when said alarm 23, is activated said alarm button 23, radiates a flashing light 29.

Or in the alternative, independent Claim 10, as amended, after the Final Office Action, recites an apparatus, comprising an alarm-clock 25, wherein said alarm-clock 25,

has at least one button associated with at least one alarm 23, and wherein when said alarm is set said alarm button 23, activates at least one luminescent device 27, and upon setting of said alarm said luminescent device 27, radiates light 29, through said alarm button 23, to provide a visual reminder that said alarm has been set, and wherein when said alarm is activated said luminescent device 27, radiates a flashing light 29, through said alarm button 23.

In the Final Office Action the Examiner had objected to the use of “visual reminder” as being “immaterial to the structure and operation of the alarm clock apparatus,” and in order to overcome this objection the Appellant had taken the structural term “at least one luminescent device ... associated with said alarm button” from Claim 11, and weaved it into Claim 10. This was not only meant to narrow the scope of Claim 10, but also to place Claim 10 in a better condition for allowance or appeal, and thus the Appellant disagrees with the Examiner that the Amendment of Claim 10, after the Final Office Action “raise new issues” or “not deemed to place the application in better form for appeal ...,” as the structural terminology or limitation of amended Claim 10, already appeared in the unamended Claim 11.

Additionally, the presences of a luminescent device from Claim 11 into Claim 10, only reinforces that said apparatus has a visual reminder.

Furthermore, the Appellant believes that a visual reminder by itself provides a structure to Claim 10, without the presence of a luminescent device, as a visual reminder has to have some structure for a person to see.

Appellant has amended Claims 10-18 and therefor the rejection of these claims under Jones in view of Parissi is now moot.

The Patent Office had objected to the previous amendment to Claims 10-18, stating that “the limitation “to provide a visual reminder that the alarm has been set”” is a “functional language” and that “Whether the user is visually reminded that an alarm is set is immaterial to the structure and operation of the alarm clock apparatus.” Due to the objection of the Patent Office to the claim language, the Appellant has amended Claims 10-18 to provide “structure and operation” to the “functional language” in order to overcome the

Patent Office's objection to the language. As the Board will appreciate that the Amendment to Claims 10-18, was to provide "structure and operation," but in response the Patent Office stated that the "proposed amendments raise the new issue of an alarm button that when set, activates at least one luminescent device. This new issue requires further search and consideration" even though, when the two sets of claims are compared this is not true, as the amendment was directed only to provide "structure and operation" in order to overcome the Patent Office's objection to the claim language. Thus this amendment should have been entered and considered by the Patent Office.

The earlier discussion with reference to Jones in section (vii) ARGUMENTS, section (1) and section (2), and the criteria to apply in obviousness ruling are incorporated herein by reference.

Parissi discloses a clock with visible and audible alarm means. The Appellant would like to respectfully state that Jones in view of Parissi does not overcome the deficiencies of the prior art, for example Jones in view of Parissi does not teach that "when the alarm is set the alarm button activates at least one luminescent device, and upon setting of the alarm the luminescent device radiates light through the alarm button to provide a visual reminder that the alarm has been set," as disclosed and claimed by the Appellant in Claims 10-18.

In fact, Parissi teaches away from Appellant's invention when he teaches that the "principal object of my invention is to provide an alarm clock which ... will give a visible signal ... [to] awaken a normal sleeper." (Column 1, lines 15-20.) Whereas, Appellant in Claims 10-18 teaches that "when the alarm is set the alarm button activates at least one luminescent device, and upon setting of the alarm the luminescent device radiates light through the alarm button to provide a visual reminder that the alarm has been set."

Furthermore, Parissi teaches away from Appellant's invention when he teaches that "In fact, if the lamp is to be used solely as a signal or alarm, the switch 12 [light on or off switch] may be omitted" (column 2, lines 21-22) and thus the lamp 10 would remain in an off position and would not be lit after the alarm has been set and would only give a visible signal when the alarm goes off. Whereas, Appellant in Claims 10-18 teaches that "when the alarm is set the alarm button activates at least one luminescent device, and upon setting of

the alarm the luminescent device radiates light through the alarm button to provide a visual reminder that the alarm has been set.”

It also seems that the Patent Office is confusing between the terms “setting” of the alarm and the “activation” of the alarm. In Appellant’s invention that “when the alarm is set the alarm button activates at least one luminescent device, and upon setting of the alarm the luminescent device radiates light through the alarm button to provide a visual reminder that the alarm has been set,” as disclosed and claimed by the Appellant in Claims 1-6, 8 and 9. Basically, in Appellant’s invention when the alarm is set the alarm button 23, lights up to give a visual reminder that the alarm has been set, which is neither disclosed nor taught in Jones. In Jones the alarm on/off button 24 has no light, either when it is set or when it is activated. The “light” in Jones for the alarm button 24, comes from the night light 28, which may or may not be activated.

Furthermore, the Patent Office is using hindsight reconstruction, which is impermissible, to reject Appellant’s patent application. Basically, the Patent Office is combining Jones alarm button 24, with Jones night light 28, and then combining the Appellant’s teaching of radiation of light upon setting of the alarm is then using this information to reject Appellant’s claimed invention.

Similarly, the Patent Office is using hindsight reconstruction, which is impermissible, to reject Appellant’s patent application. Basically, the Patent Office is combining Jones alarm button 24, with Jones night light 28, and then combining the Appellant’s teaching of radiation of light upon activation of the alarm of an already lighted alarm button, and then using this information to reject Appellant’s claimed invention.

Furthermore, independent Claim 10, as amended, recites an apparatus, comprising an alarm-clock 25, wherein said alarm-clock 25; has at least one button associated with at least one alarm 23, and wherein when said alarm is set said alarm button 23, activates at least one luminescent device 27, and upon setting of said alarm said luminescent device 27, radiates light 29, through said alarm button 23, to provide a visual reminder that said alarm has been set, and wherein when said alarm is activated said luminescent device 27, radiates a flashing light 29, through said alarm button 23, which is neither disclosed nor

taught by Jones in view of Parissi.

Claim 11

Furthermore, there is no teaching in Jones in view of Parissi, that the luminescent device 27, is selected from a group consisting of an incandescent bulb, a fluorescent bulb, a sodium bulb, a halogen bulb, an LED, and an LCD, as disclosed and claimed in Claim 11, by the Appellant. Jones only teaches the use of "light bulbs" in combination with the night light 28, but no bulb in combination with the alarm button 24. Parissi only teaches the use of a light bulb 10.

Claim 12

Additionally, there is no teaching in Jones in view of Parissi, that the material for the alarm button be selected from a group consisting of opaque material, transparent material, translucent material and iridescent material, as disclosed and claimed in Claim 12, by the Appellant. Jones only teaches the use of a "removable translucent cover" in combination with the night light 28, but no translucent material in combination with the alarm button 24. Parissi only teaches the use of an alarm setting button 7.

Claim 13

Moreover, there is no teaching in Jones in view of Parissi, that at least one electronic component 47, is associated with the alarm-clock 25, and wherein the electronic component 47, is selected from a group consisting of a second alarm-clock, an AM-FM radio, a SW-MW radio, a CB radio, a weather channel radio, a cassette tape player and/or recorder, a TV, a VCR, a CD, a DVD, a PDA, a computer, a telephone, a mobile phone and an MP3 player, as disclosed and claimed in Claim 13, by the Appellant. Jones only teaches a radio-alarm clock. Parissi only teaches an alarm clock that has visible and audible alarm means.

Claim 14

Similarly, there is no teaching in Jones in view of Parissi, that the alarm-clock 25, is

operated using an alternating current or a directed current, as disclosed and claimed in Claim 14, by the Appellant.

Claim 15

Furthermore, there is no teaching in Jones in view of Parissi, that at least one button is selected from a group consisting of a button that protrudes from the alarm-clock housing, a button that is flush with the alarm-clock housing, a button that is below the alarm-clock housing and a button that is a touch-sensitive membrane, as disclosed and claimed in Claim 15, by the Appellant. Jones only teaches a "removable translucent cover." Parissi only teaches an alarm setting button 7.

Claim 16

Additionally, there is no teaching in Jones in view of Parissi, that the alarm-clock 25, is powered by a power source selected from a group consisting of an alternating current source between about 120 volts and about 240 volts, and a direct current source between about 1 volt and about 24 volts, as disclosed and claimed in Claim 16, by the Appellant.

Claim 17

Furthermore, there is no teaching in Jones in view of Parissi, that the display of the alarm-clock 25, is selected from a group consisting of a digital display and an analog display, as disclosed and claimed in Claim 17, by the Appellant.

Claim 18

Similarly, there is no teaching in Jones in view of Parissi, that at least one means is provided to control light radiating from the alarm-clock 25, as disclosed and claimed in Claim 18, by the Appellant.

Claims 10-18

Thus the claimed subject matter of the independent claim as discussed above are

not disclosed by Jones in view of Parissi. The Appellant has already established that Appellant's independent Claim 10, is patentable over the prior art of record and therefore all the dependent claims are also patentable.

Furthermore, the various claimed elements of the Appellant's invention are not only not disclosed in the prior art, but neither has there been provided any motivation in the applied art to make obvious the Appellant's claimed invention.

Additionally, the Patent Office is using hindsight reconstruction, which is impermissible, to reject Appellant's claimed subject matter.

In light of these facts Appellant respectfully submits that Jones in view of Parissi does not make unpatentable the invention of independent Claim 10.

Additionally, Claims 11-18 depend from, and include all the limitations of Claim 10, and therefor are not obvious over Jones in view of Parissi.

Therefore, the Appellant respectfully requests that the rejection of Claims 10-18 under 35 U.S.C. § 103 (a) should kindly be reversed.

(4) Was it proper to issue a defective Advisory Action?

A Response to the Final Rejection was filed for this Patent Application and Claims 1-18 were amended. However, the Patent Office maintained the rejection of Claims 1-18.

The Patent Office then issued a defective Advisory Action on December 20, 2006, where for the purposes of Appeal it was not clear whether the Proposed Amendment was entered or the entry was denied as the box in Section 7, of the Advisory Action dated December 20, 2006, had been checked, but boxes 7a or 7b had not been checked and thus it was not clear to the Appellant whether for the purposes of Appeal the "proposed amendment(s): a) will not be entered, or b) will be entered"

In the "Notification of Non-Compliant Appeal Brief" dated May 2, 2007, the Patent Office had stated that "In the advisory action dated 12-20-2006, the Examiner clearly indicated in Item 3 that the proposed amendment will not be entered for the reasons checked in sub-items (a) and (c)." The Appellant agrees that Item 3, sub-items (a) and (c) were properly marked, but the Appellant would like to bring to Board's attention that Item 3 only deals with "proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief," while Item 7, and the sub-items of section 7, deal with "For purposes of appeal, the proposed amendment(s) ..." and the Examiner was silent on this issue and thus the confusion. Furthermore, the Examiner could deny entry of an Amendment in Item 3, but could allow the entry with an explanation in Item 7.

In a second "Notification of Non-Compliant Appeal Brief" dated October 31, 2007, the Patent Office has provided some clarification of the internal Patent Office practice and has said that once the examiner is aware of a defective Advisory Action it would "cause the examiner to issue a separate Advisory Action clarifying the status of the After Final amendment."

The Appellant contends that the Examiner is aware of the defective Advisory Action and thus far the Examiner has not issued a new Advisory Action.

In the second "Notification of Non-Compliant Appeal Brief" dated October 31, 2007, the Examiner has provided explanation on why various "boxes" were checked and why some "boxes" were not checked. However, an Appellant has to rely on written material in order to properly respond to the Patent Office, and if the written material is defective then it becomes confusing and difficult for an Appellant to properly respond, such as, in the instant case.

Thus, the Appellant respectfully requests that the Board address the issue of a defective Office Action as issued by the Patent Office in the instant case.

Furthermore, because the Advisory Action was defective, the Appellant has been harmed, and the Appellant respectfully requests the Board to review the Appeal Brief as it currently stands.

PATENTABILITY OF INDIVIDUAL CLAIMS

The Patent Office has not located a reference that either alone or in combination with another reference anticipates the inventions of Claims 1-6, 8 and 9 or makes obvious the inventions of Claims 7 and 10-18, as discussed earlier, whether as presented prior to the Final Office Action or as amended after the Final Office Action.

As stated and discussed in the appropriate sections the inventions of Claims 1-18 stand or fall alone, whether as presented prior to the Final Office Action or as amended after the Final Office Action.

CLOSING REMARKS

It is clear from the reference of record that the Patent Office has not found any reference that either teaches or discloses the Appellant's claimed invention.

Therefore, the Appellant respectfully requests that the patentability of Claims 1-18 should kindly be confirmed, as the Patent Office has not shown how the art of record provides any motivation or incentive to a person skilled in the art to either anticipate or make obvious Appellant's invention.

The Appellant would also like to state that it was not clear from the Advisory Action dated December 20, 2006 whether Claims 1-18, as amended, are entered for the purposes of this Appeal as the box in Section 7, has been checked but boxes 7a or 7b have not been checked and thus it is not clear whether for the purposes of Appeal the "proposed amendment(s): a) will not be entered, or b) will be entered" Because of conflict or confusion between Item 3 and Item 7 of the Advisory Action, the Board could send the case back to the Examiner for a further review of these issues. However, as stated in this Amended Appeal Brief the Appellant have argued both sets of claims and the Board can use either set of claims for their final determination.

In light of the above discussion, the art made of record either alone or in combination with another reference does not anticipate or make obvious Appellant's invention.

Therefore, Jones, Jr., (U.S. Patent No. 5,402,396) (hereinafter Jones) either alone or in combination with another reference does not anticipate Appellant's invention and the rejection of Claims 1-6, 8 and 9 under 35 U.S.C. § 102(b), should kindly be reversed. Furthermore, the rejection of Claim 7 under 35 U.S.C. § 103(a) as being unpatentable over Jones, Jr., (U.S. Patent No. 5,402,396) should kindly be reversed. Similarly, the rejection of Claims 10-18 under 35 U.S.C. § 103(a) as being unpatentable over Jones, Jr., (U.S. Patent No. 5,402,396) in view of Parissi (U.S. Patent No. 2,444,748) (hereinafter Parissi) should kindly be reversed.

Accordingly, for at least the reasons given above, Appellant submit that their claimed inventions are not anticipated or made obvious over the applied prior art, and that Claims 1-18, are all clearly patentable over the references of record, whether as presented before the Final Office Action or as amended after the Final Office Action.

Favorable consideration of this Patent Application is respectfully requested. Specifically, the Appellant respectfully requests that the patentability of Claims 1-18 be affirmed, whether as presented before the Final Office Action or as amended after the Final Office Action.

Respectfully submitted,

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(viii) CLAIMS APPENDIX

(a) Claims as Presented Prior to Final Office Action

1. (Currently Amended) An apparatus, comprising an alarm-clock, wherein said alarm-clock has at least one button and at least one alarm, and wherein when said alarm is set said alarm button radiates light to provide a visual reminder that the alarm has been set.
2. (Original) The apparatus of Claim 1, wherein at least one luminescent device is associated with said alarm button, and wherein said luminescent device is selected from a group consisting of an incandescent bulb, a fluorescent bulb, a sodium bulb, a halogen bulb, an LED, and an LCD.
3. (Original) The apparatus of Claim 1, wherein material for said alarm button is selected from a group consisting of opaque material, transparent material, translucent material and iridescent material.
4. (Original) The apparatus of Claim 1, wherein at least one electronic component is associated with said alarm-clock, and wherein said electronic component is selected from a group consisting of a second alarm-clock, an AM-FM radio, a SW-MW radio, a CB radio, a weather channel radio, a cassette tape player and/or recorder, a TV, a VCR, a CD, a DVD, a PDA, a computer, a telephone, a mobile phone and an MP3 player.
5. (Original) The apparatus of Claim 1, wherein said alarm-clock is operated using an alternating current or a directed current.
6. (Original) The apparatus of Claim 1, wherein said at least one button is selected

from a group consisting of a button that protrudes from the alarm-clock housing, a button that is flush with the alarm-clock housing, a button that is below the alarm-clock housing and a button that is a touch-sensitive membrane.

7. (Original) The apparatus of Claim 1, wherein said alarm-clock is powered by a power source selected from a group consisting of an alternating current source between about 120 volts and about 240 volts, and a direct current source between about 1 volt and about 24 volts.

8. (Original) The apparatus of Claim 1, wherein the display of said alarm-clock is selected from a group consisting of a digital display and an analog display.

9. (Original) The apparatus of Claim 1, wherein at least one means is provided to control light radiating from said alarm-clock.

10. (Currently Amended) An apparatus, comprising an alarm-clock, wherein said alarm-clock has at least one button and at least one alarm, and wherein when said alarm is set said alarm button radiates light to provide a visual reminder that said alarm has been set, and wherein when said alarm is activated said alarm button radiates a flashing light.

11. (Original) The apparatus of Claim 10, wherein at least one luminescent device is associated with said alarm button, and wherein said luminescent device is selected from a group consisting of an incandescent bulb, a fluorescent bulb, a sodium bulb, a halogen bulb, an LED, and an LCD.

12. (Original) The apparatus of Claim 10, wherein material for said alarm button is selected from a group consisting of opaque material, transparent material, translucent material and iridescent material.

13. (Original) The apparatus of Claim 10, wherein at least one electronic component is associated with said alarm-clock, and wherein said electronic component is selected from a group consisting of a second alarm-clock, an AM-FM radio, a SW-MW radio, a CB radio, a weather channel radio, a cassette tape player and/or recorder, a TV, a VCR, a CD, a DVD, a PDA, a computer, a telephone, a mobile phone and an MP3 player.
14. (Original) The apparatus of Claim 10, wherein said alarm-clock is operated using an alternating current or a directed current.
15. (Original) The apparatus of Claim 10, wherein said at least one button is selected from a group consisting of a button that protrudes from the alarm-clock housing, a button that is flush with the alarm-clock housing, a button that is below the alarm-clock housing and a button that is a touch-sensitive membrane.
16. (Original) The apparatus of Claim 10, wherein said alarm-clock is powered by a power source selected from a group consisting of an alternating current source between about 120 volts and about 240 volts, and a direct current source between about 1 volt and about 24 volts.
17. (Original) The apparatus of Claim 10, wherein the display of said alarm-clock is selected from a group consisting of a digital display and an analog display.
18. (Original) The apparatus of Claim 10, wherein at least one means is provided to control light radiating from said alarm-clock.

(b) Claims as Amended After Final Office Action

1. (Currently Amended) An apparatus, comprising an alarm-clock, wherein said alarm-clock has at least one button associated with at least one alarm, and wherein when said alarm is set said alarm button activates at least one luminescent device, and upon setting of said alarm said luminescent device radiates light through said alarm button to provide a visual reminder that said alarm has been set.
2. (Currently Amended) The apparatus of Claim 1, wherein said luminescent device is selected from a group consisting of an incandescent bulb, a fluorescent bulb, a sodium bulb, a halogen bulb, an LED, and an LCD.
3. (Original) The apparatus of Claim 1, wherein material for said alarm button is selected from a group consisting of opaque material, transparent material, translucent material and iridescent material.
4. (Original) The apparatus of Claim 1, wherein at least one electronic component is associated with said alarm-clock, and wherein said electronic component is selected from a group consisting of a second alarm-clock, an AM-FM radio, a SW-MW radio, a CB radio, a weather channel radio, a cassette tape player and/or recorder, a TV, a VCR, a CD, a DVD, a PDA, a computer, a telephone, a mobile phone and an MP3 player.
5. (Original) The apparatus of Claim 1, wherein said alarm-clock is operated using an alternating current or a directed current.
6. (Original) The apparatus of Claim 1, wherein said at least one button is selected from a group consisting of a button that protrudes from the alarm-clock housing, a button that is flush with the alarm-clock housing, a button that is below the alarm-clock housing

and a button that is a touch-sensitive membrane.

7. (Original) The apparatus of Claim 1, wherein said alarm-clock is powered by a power source selected from a group consisting of an alternating current source between about 120 volts and about 240 volts, and a direct current source between about 1 volt and about 24 volts.
8. (Original) The apparatus of Claim 1, wherein the display of said alarm-clock is selected from a group consisting of a digital display and an analog display.
9. (Original) The apparatus of Claim 1, wherein at least one means is provided to control light radiating from said alarm-clock.
10. (Currently Amended) An apparatus, comprising an alarm-clock, wherein said alarm-clock has at least one button associated with at least one alarm, and wherein when said alarm is set said alarm button activates at least one luminescent device, and upon setting of said alarm said luminescent device radiates light through said alarm button to provide a visual reminder that said alarm has been set, and wherein when said alarm is activated said luminescent device radiates a flashing light through said alarm button.
11. (Currently Amended) The apparatus of Claim 10, wherein said luminescent device is selected from a group consisting of an incandescent bulb, a fluorescent bulb, a sodium bulb, a halogen bulb, an LED, and an LCD.
12. (Original) The apparatus of Claim 10, wherein material for said alarm button is selected from a group consisting of opaque material, transparent material, translucent material and iridescent material.
13. (Original) The apparatus of Claim 10, wherein at least one electronic component

is associated with said alarm-clock, and wherein said electronic component is selected from a group consisting of a second alarm-clock, an AM-FM radio, a SW-MW radio, a CB radio, a weather channel radio, a cassette tape player and/or recorder, a TV, a VCR, a CD, a DVD, a PDA, a computer, a telephone, a mobile phone and an MP3 player.

14. (Original) The apparatus of Claim 10, wherein said alarm-clock is operated using an alternating current or a directed current.
15. (Original) The apparatus of Claim 10, wherein said at least one button is selected from a group consisting of a button that protrudes from the alarm-clock housing, a button that is flush with the alarm-clock housing, a button that is below the alarm-clock housing and a button that is a touch-sensitive membrane.
16. (Original) The apparatus of Claim 10, wherein said alarm-clock is powered by a power source selected from a group consisting of an alternating current source between about 120 volts and about 240 volts, and a direct current source between about 1 volt and about 24 volts.
17. (Original) The apparatus of Claim 10, wherein the display of said alarm-clock is selected from a group consisting of a digital display and an analog display.
18. (Original) The apparatus of Claim 10, wherein at least one means is provided to control light radiating from said alarm-clock.

(ix) EVIDENCE APPENDIX

None

(x) RELATED PROCEEDINGS APPENDIX

None